

Jeopardy Assessment
for the Proposed Incidental Taking Authorization
of Acadian Flycatcher, Cerulean Warbler and Hooded Warbler
for the Wisconsin Public Service Corporation Guardian II Sheboygan Lateral Pipeline Project
located in Sheboygan County

Background

The Kettle Moraine State Forest (KMSF) holds not only the largest tract of southern forest in southeast Wisconsin today but the only remaining tract of its size in the region. Three bird species listed as threatened in the State of Wisconsin were found in the KMSF during breeding bird surveys conducted in 2006 and 2007: Acadian Flycatcher, Cerulean Warbler, and Hooded Warbler. There are other state or privately held lands contiguous with the KMSF that provide or are likely to provide habitat resources for these species. Regional and national populations of these rare passerines have experienced significant declining trends in recent years. The importance of the KMSF to the continued existence of these birds in southeast Wisconsin cannot be over-emphasized. It is imperative that impacts during the breeding season in this vital area be avoided.

Noise disturbances during the breeding season may impact sensitive bird species by interfering with a bird's ability to defend territory, to attract mates, to recognize mates and/or young, and to miss warnings of predation and other hazards. Human disturbance either through activities and/or noise can flush birds from vegetation or from nests. Birds may flee territories which can lead to decreased ability to incubate eggs, to feed young, or to defend the nest from predators. Flushing may also render adults vulnerable to predation. Disruptive noises early in the breeding season can prevent males from establishing territories and displace them from their breeding grounds.

The species identified above were detected at point count locations 100 m from the ROW in the Kettle Moraine State Forest-Northern Unit during the 2006 and 2007 breeding seasons. The Warbler was also identified on nearby DNR Silver Spring/Mill Creek Streambank Easement property during the 2007 breeding season. The breeding season beginning and end dates (including 2nd and 3rd broods) for these passerines are: late April-early May through the end of August for Acadian Flycatchers; mid May through mid September for Cerulean Warblers; and early to mid-May through late July-early September for Hooded Warblers.

The Guardian II Sheboygan Lateral Project being constructed by Wisconsin Public Service Corporation (WPSC) is 31 miles in length, the majority of which will be constructed within a regularly maintained transmission line right-of-way (ROW). Approximately 3.3 miles passes through the KMSF as well as approximately 2.2 miles through the Silver Spring/Mill Creek Streambank Easement Area. Pipeline construction will consist of various activities completed sequentially beginning with clearing the workspace of vegetation, trench excavation, pipe-laying and welding, backfilling the trench, stabilization, restoration, and finally testing of the pipeline.

Jeopardy Assessment

The Department originally recommended that timing restrictions for the three listed forest species be applied from April 15 to August 31 along the length of ROW from approximately milepost (MP) 13.70 to 15.85 and MP 16.25 to 16.45 plus additional buffer to extend the total restricted segment from MP 13.70 to 16.73. The buffer is based on research of noise impacts on breeding birds. In these studies, the sources of noise ranged from recreational activities to highway traffic. Negative impacts (i.e. inability of male to attract a female, lower reproductive success, lower breeding bird densities, extended time away from nest,

etc.) were found at distances ranging from 1,500 ft to over 9,000ft, depending on the level of noise and the bird species involved in the study. Because noise disruption can occur from beyond the edge of a defended territory, buffer distance cannot be based on territory boundaries. Therefore, to allow activities to occur during the breeding season right up to the forest edge would not prevent disturbance from noise that occurs outside of the forest edge.

During consultation with WPSC the Department agreed to reduce the timing restriction from August 31 to August 15, but also requested that vegetation clearing within the ROW be completed prior to April 15. Subsequently WPSC notified the Department that they would still need the full month of August to construct the pipeline within the segment from MP 13.70 to 16.73 because steep and undulating topography in this segment required additional time to install and test the pipeline before the committed in-service date of November 1, 2008. WPSC had considered using additional work crews to complete this segment within 2.5 months; however, they determined that this would not be feasible, because the steep topography would make traffic and construction staging within the workspace inefficient and potentially unsafe. Therefore, WPSC submitted an Incidental Take Authorization Request to the Department to enter into the segment from MP 13.70 to 16.73 by August 1, 2008.

Regional and national populations of these rare passerines have experienced significant declining trends in recent years. The importance of the KMSF and adjacent forested and undeveloped lands to the continued existence of these birds in southeast Wisconsin cannot be over-emphasized. However, the Department feels that WPSC's request is reasonable in that they have made an effort to avoid and minimize incidental take to the extent feasible. For these reasons, the Department believes that with implementation of the Conservation Measures listed below, incidental take of the Acadian Flycatcher, Cerulean Warbler, and Hooded Warbler is unlikely to impact the status or recovery potential of the affected local populations or the statewide recovery potential of these species. Therefore, the Department has determined that the proposed project is not likely to jeopardize the continued existence of the state population of the three bird species or the whole plant-animal community of which they are a part.

Conservation Measures

The following measures apply to the segment from MP 13.70 to 16.73:

1. Vegetation clearing in the ROW for the pipeline was completed prior to April 1, 2008, well before the breeding season for these species, to eliminate the possibility that the birds may nest in the ROW and reduce the likelihood that the birds may establish nesting territories that overlap with or are adjacent to the ROW.
2. A Construction Mitigation and Monitoring Plan for the Kettle Moraine State Forest (KMSF), April 2008 was developed for portions of the project that pass through the KMSF (see attached Plan). Although the plan is specific to the KMSF it will be applied to the entire nesting bird timing restriction area, including those portions outside the KMSF. The plan outlines measures for construction, restoration, invasive species control and vegetation maintenance in the pipeline ROW.
3. Post-construction pipeline ROW maintenance will be conducted to maintain as much vegetation as possible (see Figure 7-21). A mowed four-foot path will be required down the center-line of the ROW. Shrubs will be allowed to reestablish for eight feet on either side of this line to lessen the extent of edge effects into the forest. Although the permanent pipeline easement is from 36 to 50 feet wide there are no vegetation restrictions for the pipeline outside this 20-foot width.
4. Breeding bird and/or nesting surveys will be completed by a Department-approved biologist in areas within and/or adjacent to the segment for a period no greater than five years beginning in June 2008. The survey protocol will be approved by the Department prior to implementation each year. At the

end of each year, the Department, in consultation with WPSC, shall determine the need for and nature of surveys in subsequent years. Surveys in those portions of the segment that are not on Department-owned land are subject to landowner approval.

5. During operation of the pipeline, all non-emergency activities shall be completed between September 1 and April 14, unless otherwise approved by the Department. The period of this restriction is for the three birds species that are the subject of this Jeopardy Assessment. It does not preclude other restrictions that may apply.
6. Because the WPSC pipeline ROW is shared with a transmission line ROW owned by another utility and because the two utilities have different maintenance and operational requirements, it is important that both easement owners mutually agree on methods to maintain their respective ROW's that minimize impacts to the three threatened bird species and the whole plant-animal community of which they are a part. WPSC shall work with the transmission line easement owner to maximize vegetation cover and diversity within this segment and minimize the cover and extent of invasive species.
7. WPSC shall maintain written and/or photo-documentation of compliance with Conservation Measures 2, 4 and 6, and provide this documentation to the Department upon request.